PE 55/93

G. R. S. IX-5]

Previous references.

1892-93

~~192~~ .

(28)

File No 146/92

Serial Nos 1-5

Later references.

GENERAL AND REVENUE SECRETARIAT

Serial Nos 1-5

Major ~~Part~~ B for January 1894

SUBJECT.

Appeal of Rudrush regarding the Patels of Bilagali in Sorab Taluk

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S D 2283—G P—20,000—14-6-20

Copy to Collr
P. Bdi

CHIEF SECRETARY'S OFFICE.

PETITION BRANCH.

Appeal No 1 of 1892-93
Applicant 1st Respondent
Mudreah 2. Khamis

OFFICE NOTE.

SUBJECT. Claim to the Fatiki of Batiyali in the Ba Province

LAST REFERENCE. Letter No. 1358/1016 dated 1st February 1893
from the Deputy Commissioner Mino

On the 6th October 1891, the Applicant, as Plaintiff, filed a suit for the registry of the Fatiki of Batiyali in the Ba Tikina Court, and of the communal lands attached thereto, in his name. He stated that his father Ezra, who was Hereditary Chief, was dismissed about 20 years ago on conviction for assault, - that there was then an order that the office should be conferred on Ezra's heirs, - that as Plaintiff was a minor, other persons were looking after the

duties on the responsibility of the Amildar, - that in 1956 the Patali and unoccupied lands were registered in the name of 1st defendant, - that the latter was dismissed for appropriating Government forest land, - that in 1982 the 1st defendant's son, the 2nd defendant, was appointed Patil, - that the defendants have no right to the office they being ~~Gaikwad~~ and the Plaintiffs Jamish Jangam, - and that Plaintiff was a minor till 2 years and 10 months prior to the institution of the suit, the claim was within time

2. The defendants pleaded that Plaintiffs father was dismissed in 1969 - that there was then no order that the office should be given to his heirs; that Plaintiff was not in existence at that time and had no right to maintain this suit; that

3 that Plaintiff became a major upwards of 3 years prior to institution of suit and the suit was therefore barred; and that Defendants had adverse possession for over 12 years.

3. The Sugar Sub-Division Officer held that the suit was barred, and dismissed it, without going into its merits. He was of opinion, upon the evidence adduced, that Plaintiff was 2 months old at the time of his father's conviction, the exact date of which in 1867 could not be ascertained, but which, for argument's sake, was assumed to be 3rd December 1867, - that Plaintiff therefore attained his majority about the beginning of November 1887 or thereabouts, - and that the suit should have been filed before the commencement of November 1890.

4. The Deputy Commissioner

X It was filed on 15 Dec. 1891.

agreed with the Sub-Division
Officer and dismissed ——
the appeal.

4

5. The grounds of appeal
are: —

(I) The Deputy Commissioner erred
in holding that the Plaintiff's
suit was barred.

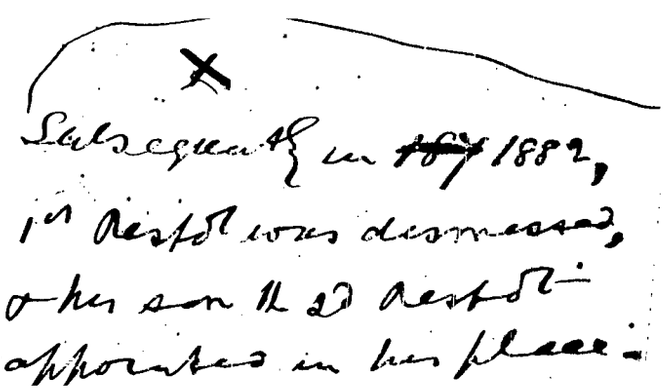
(II) From the copies of the
annexed two declarations
given by 1st Defendant —
one in September 1878
and one in January 1879
before the Kanungo of
Sorab — it is abundantly
clear that the 1st Defendant
acknowledged Plaintiff's
father as the Khudkast
Patil within 12 years before
the date of suit.

(III) The same records of the
other correspondence connected
with them will show that
Plaintiff's uncle Sirsa
Kondiba took objection
to 1st Defendant's appointment,
urging his own claims
and that of the Plaintiff
as Khudkast for the Patilki
successively in 1878 - 1879 and
1887

7. The records and correspondence referred to in the 3rd ground of appeal have not been received.

8. The notes of evidence and the judgments of the lower Courts are in English.

9. The point for consideration is whether or not the suit is barred.


Subsequently in ~~1879~~ 1882,
1st Resolution was discussed,
when on the 2d Resolution
was moved in her place.

(General Serial No. 82.)

1892..

(2)

No. 1417

Name of Petitioner. Rudrige

Village. Biligali

Taluk. Sorab

District. Shimoga

Date of Arzi. 6-12-92

Date of Receipt. 8-12-92

Date of Disposal.

No. of Enclosures. 5

ABSTRACT.

Petitioner appeals against the decree of the Deputy Comr. of Shimoga in Revenue Appeal Suit No. 3 of 92

S.K. 9/12

(1) Stamp sufficient
(2) Order copy produced.
(3) Appeal in time
(4). Rule I Cl (1) of the Addl Rules
Call for Dy Comr's Report
BO
R dt 14-12-92
30/12/92

Mysore Govt. Central Press Bangalore—7-9-92,—1000.

(General Serial No. 30.)

8710

1893. R. O

Pet 367

From

The Dy Commissioner
Shimoga District

To

The Chief Secretary to the Dewan
of Mysore.

Dated 4th February 1893.

Despatched

Received 6.

Enclosures No. 1 Petn with Endd
1 Record and

General No. 1058 } 1892-93 Copy
No. 1016 }

LR. 146-92-3

With reference to his
Off. Memorandum
No. Pet/826, dated 6th Octr
returns the petition Regd
No. 4/17 with its enclosures
and forwards Proceedings.

Peter Br. Grant
7/2

8/2/93

From 1893.

13. (4)

The Deputy Commissioner
Shimoga District

To

The Chief Secretary to the
Govt of Mysore.

Dated 4th February 1893.

No 1058 & 3792 93.
1916

Re returning the Petition
Regd & Nº 1917 received with the Chief
Secretary's Official Memorandum
Nº 1ct/826, dated 16th Ultimo with its
enclosures, has the honor to forward
the Proceedings in Revenue appeal Nº 3
of 1892-93 on the file of this Court
together with the Proceedings of the
Lower Court in O.S. Nº 2 of 1892
on the file of the Sagar Sub Division
Office.

Abdul Rahman Khan Bahadur
Deputy Commissioner

MRK

Boa

Petn for appl 8/12/92

94

Examined by 6/12/92

140

Words stamp

In the court of His Excellency the Governor in Council of Mysore - Bangalore.

A.S. No 67 92-93

Second appeal No: of 1892.

(illegible) Dittiah - residing at Bilijali village of Belavadi, Nagany - Koral Taluq - Shimoga District. (Plaintiff) Appellant

1. Dittiya appellant.

2. Dittaiah - (Son of the 1st defendant) Residing at Thirthapoora of the Belavadi Nagany - Koral Taluq - Shimoga District. (Defendants) Respondents

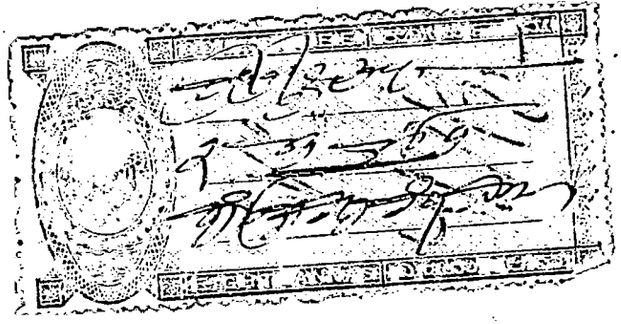
5-2-94

The appellant above named most humbly begs to appeal against the decree of the Deputy Commissioner of Shimoga in Revenue appeal Suit No. 3 of 1892 for the following reasons:-

I. The Deputy Commissioner erred in holding that the Plaintiff's Suit was barred

II. From the terms of the annexed two depositions - given by 1st defendant - one in September 1878 and one in January 1879 before the Amildar of Koral Taluq - it is abundantly clear that the 1st defendant acknowledged Plaintiff's father as the thenkan Patel within 12 years before the date of Suit.

III. The same records of the Atha correspondence connected



1892-93 Vol 1
No 6
Vol 1

Regd

In the Court of the Sub Division
Revenue officer, Sagar.

Revenue Case No 2 of 189

Present. D. Ramachandra Rao, Sub-Division Officer
Sagar.

Dated 22-6-92.

Plaintiff.
Rudriah bin
Veeriah.

vs.

Defendan
1. Darmiah bin Karia
2. Koriappa bin Lin

SUB-DIVISION OFFICE
SHIMOGA
DISTRICT
SAGAR

Judgment.

The plaint is as follows:—
That the plaintiffs father Veriah and
grand father were Hackdars to the Office
of Patail and Gomballe lands
attached to it; that the plaintiffs'
father who was in office, was convicted
on a charge of assault some 20 years
ago and was dismissed, that as the
plaintiff was then a minor, a Stranger

was appointed Patail; that in the year

1876 the Office and the Lands attached

to it were registered in the name of the first

defendant; that the first defendant

was dismissed for having been convicted

on a criminal charge and his son the 2d defendant

was appointed Patail in the year 1882;

that the defendants are not Hereditary

to the office; and that the defendants

may be ousted from office and lands

attached to it, may be restituted

2. As the plaintiff was minor, cause

of action arose two years and ten months

previous to the date of plaint, viz 31st October 1891.

3. The written Statement of the defendants

was as follows:—

That the plaintiff's father was convicted

in the year 1869; that the office was not

then ordered to be given to his heirs; that

the plaintiff was not born when Verdict

2/ was convicted; he has no right to bring this suit. The plaintiff attained his majority more than three years ago; the suit is therefore barred. That Revenue Courts have no jurisdiction to try suits for Combalee or Service Lands; and that the plaintiff has no right to the office as the defendants have enjoyed it for more than 12 years.

4. The following issues were framed

1st Is the suit barred?

2? Are the defendants Hakdars to the office and Combalee lands?

3. Has a Revenue Court powers to entertain suits regarding Combalee or Service lands?

4. Did the defendants acquire right to the Office, because they are in it from last 12 years or so.

5. The plaintiff who was represented by pleader Krishnarow, examined the following witnesses and filed Exhibits

SUB-DIVISION
SUBORDINATE
DISTRICT
SAGAR

as noted below.

1st Plaintiff Rudriah
2d. Sivarudriah
3d. Niranjanappa
4th Narayappa
5th. Rudrappa.

9.

Patwary Register, Sorab Taluq for 1865 — A.

Gombalee Land Chitta for 1855/56 B.

Khatey books of the Village of Bilagaley from 1871/72 to 1886/87 C. (16 Books).

Khatey books of do for Do. D.

Order No Nil, Dated 17th February/79 from the Deputy Commissioner with 10 enclosures — E.

Patwary Settlement Register of Bilagaley Village — F.

6. The Defendants represented by Mr. Advocate Venkatarow, examined the 2nd Defendant Dharmaiah and filed the following Exhibits:—

3/ Polizy Register of Bilagaley — No I
"

Padail Sannad granted to } No II.
the 1st Defendant.

20

7. The evidence adduced, discloses that Plaintiff's father Ezekiah, who was descendant of the Hackdai family and who was in office, was convicted in the year 1869, on a charge of assaulting a Government peon (which conviction the Plaintiff admits) and dismissed from office. In September 1870, one Holiyapilla, a Stranger was appointed by Government as Padail, who in the year 1875 was convicted on a charge of embezzlement and dismissed from office. On the 30th of November 1876, the 1st Defendant Kariapilla who is also not a member of the Hackdai family, was selected by Government to the office and on his dismissal for some disgraceful offence

his son the 2nd Defendant was appointed to the office in July 1882. (See Exhibit E).

Thus the Office is in the family of the Defendants from 30th November 1876, from which date the cause of action arose.

8. It is in evidence that the Plaintiff was about two or three months old when his father was convicted. It is not possible to ascertain the exact date of Plaintiff's birth or that of the conviction of his father. The Deputy Commissioner and District Magistrate States that no records to prove the Plaintiffs' fathers conviction, are forthcoming in his Court. It is however in evidence that the Plaintiffs father was convicted in 1869 (Exhibit E & F). Taking for arguments sake that the date of conviction as the last day in the year viz 31st December 1869, the Plaintiff was then a child of 3 or 4

4/

old. All his witnesses swear to this point. It must now be said that the plaintiff attained his majority about the beginning of the month of November 1887 or thereabouts. Under Section VII of the Limitation Act 1877, the time for the plaintiff runs for three years from the date he attained majority. So he had time upto about the beginning of November 1889. This suit has been brought on 31st October 1891 or about one year after the expiry of the time allowed by Law. I therefore dismiss the suit with costs, without going in its merits.

Sd/

22/6/92

D. Ramachandra.
Sub. Div. Officer, Coorg

True Copy"

T. Krishna Iyengar
Head Munshi

Compd
TK

SUB-DIVISION
SUB-DIVISIONAL OFFICER
STAMPS

23

Copy applied for by
the Society } 4-1-92

Copy ready for delivery 7-7-92

Copy delivered over 8-7-92.

Mr Proctor 15/0
Copying fee 1-8-
Carriage 1/2 -5-4
1-13-4.

B. Hewetson
co. 6

Before the Government of

His Highness the Maharajah

of Mysore (7)

24

Appeal No 67 of 1892-93

Appellant

Rudrau of Bilgali

Sorab Taluk, Shimoga

District

Respondents

1. Hiriyappa

2 Shamrao, Son

& 1st Respt

LR 146-92-14

Decision 2nd January 1894

Appellant's father who was Patail was dismissed from office on the ground that he was guilty of an assault, and 1st Respondent — a stranger — was appointed in his place in November 1876. Subsequently, in 1892, 1st Respondent was dismissed and his son the 2nd Respondent appointed in his place. Appellant brought a suit for the

office on ~~21st~~ October 1891. 16th

25

The Sub-Division officer who heard the case found that the appellant attained his majority in November 1887, and that the suit was therefore barred by the Law of Limitation, and dismissed the suit; and his decision was confirmed by the Deputy Commissioner. The appeal is against this decision.

2. Appellant's contention is that the cause of action should be reckoned from the date of the 2d Respondent's appointment to the office, as the adverse possession of the 1st Respondent terminated with his dismissal,

No. 1417

MYSORE DEWAN'S OFFICE,
PETITION DEPARTMENT,
2nd January 1894

Endorsement granted to Rudrisa of Bilagali, Sorab Taluk, Shimoga District

in reply to his Petition Registered No. 1417 dated 6th December 93 appealing against the Ag: Commr's order regarding Petitioner's claim to the Patel of Bilagali

Petitioner is informed that his appeal has been dismissed

2. The enclosure returned

"By Order"

Chief Secretary.

Mysore Govt. Central Press, Bangalore.—3-2-93—2000.

(IV) As Defendant was appointed not on his own right but by order of Government in 1879 it cannot operate as a bar to Plaintiffs ~~suit~~ right to sue, more especially seeing that Defendant was convicted and punished for a criminal offence.

6 The depositions of 1st Defendant referred to in the 2nd grounds of appeal are as follows —

I dated 28th September 1878.

I was appointed Patel of Bilagali in 1876–77 and have been doing duty since then. One Holiyappa was formerly Patel of this village. He was convicted of embezzlement. He was not related to me ..... I have been given samad as well as possession of the inmbli lands, the Khata of which was in Holiyappa's name .... Sivarudrappa does not at all reside in this village. The inmbli

lands in his management were not snatched from him and given to me. Sivarudrappa is not related to the former Patil Holiyappa. Holiyappa was of Malavar caste and Sivarudrappa a Jangam.

There was one Huchavvappa elder brother of Sivarudrappa. The Patili was in his name, but he was not doing duty. He had in writing abandoned his right in favor of Jada Murugappa who accordingly was doing duty. Murigappa subsequently got the Patili entered in his own Holiyappa's name

II. dated 27th January 1879.

There was a Huldar Patil of Bilagali called Veera. He was imprisoned and his appointment conferred on Holiyappa son of Jada Murigappa. The latter was convicted of embezzlement whereupon, in 1876, I was appointed Patil by grant of Sanad. Since then I have been doing duty.

M 67 of 1892-93

Appt
Rudria
~~Karyappa~~
of Sala Bilgulli
Sorab Taluq
Shimoga Dt

Respt
1 Karyappa
2 Dharmia
son of 1st

Appt's father who was Patel was dismissed from office on the ground that he was guilty of an assault on 1st Respt - a Lingayet - who appointed in his place in December 1876. Appt brought a suit for the office on 31st October 1891 - Munsiff dismissed to hear the case found that Appt allowed to magnify in June 1887, & that the suit was therefore barred by the law of limitation & dismissed the suit, & his decision was confirmed by Dy Comr - He appeals against these decisions -

Appt's contention is that the cause of action should be reckoned from the date of the 2d Respt's appointment to the office of

9

The adverse possession of the 1st Respt terminated with her dismissal. Contention is altogether inadmissible. The decision of the Lower Court is confirmed & the appeal dismissed.—

LCP
29/1/94

ASP
29/1.

Reid

Order is expressed that the appeal has been dismissed.

LCP

ASP
29/1

RR 826 ✓ Draft 20-09-92 19-1-93

MYSORE DEWAN'S OFFICE,

PETITION DEPARTMENT. (3)

OFFICIAL MEMORANDUM.

The accompanying Petition No. 1417

dated 6th Dec 1892 received at the

Dewan's Office from Rudrea of Biligali Sorab Taluk, appealing against the Comr's decree in re his claim to a Patelli office & Umbali land of the said village,

is forwarded, together with its five enclosures, to the Dy Commissioner, Shimoga District, for submission of Progs with a report on the facts of the case & on the points taken in the petition.

2 The Petition should be returned.

By Order,

Draft

Chief Secretary.

BANGALORE, 16/19 January 1893.

M. G. O. P. Bangalore.—21-11-92—3,000.

connected with them will shew that ~~the~~ plaintiff's uncle Siva Doodriah took objection to pl^ff defendants' appointment urging his own claim and that of the plaintiff as huckdar for the Patailee summarily in 1878–1879 and 1881.

IV. As defendant was appointed not on his own right but by order of Government in 1879 it cannot operate as a bar to plaintiff's right to sue – more especially seeing that defendant was convicted and punished for a criminal offence.

Bangalore
6th Decr 1920

V. Krishnaswamy,
Advocate for Appellant

24

The contention is altogether inadmissible. The decision of the Lower Court is confirmed and the appeal dismissed.

By order,

Chief Secretary

28/1/94

Receipt

No. 12742
Pet. F. 85-93

Dy 29-1-94
5-2-94

Copy to the Deputy Commissioner of Shimoga with the ver: proceedings received with his No. 1058/1016 Dy 4th Feb 1/93

By order,

Chief Secretary

Press copy sent 6/2/94.

copy sent. 5/2/94.